

JUDGE WOODS

533

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VICTOR MIRANDA-AGUIRRE

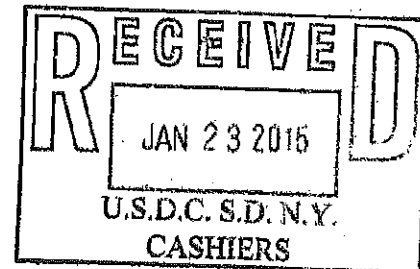
Index No.

Plaintiff,

-against-

COMPLAINT AND JURY DEMAND

COUNTY OF ROCKLAND, TOWN OF
CLARKSTOWN, CLARKSTOWN
POLICE OFFICER RORY HEALY and
DETECTIVE CHRISTOPHER
TIERNEY; and JOHN DOES- 1
through 10 (said names being fictitious
as the individuals who failed to treat
plaintiff properly for the injuries
sustained in while at the Rockland
County Jail and who falsely arrested
and incarcerated plaintiff and injured
plaintiff)



Defendant.

Plaintiff, complaining of the defendants by his attorneys, FRANZBLAU
DRATCH, P.C. respectfully alleges upon information and belief as follows:

INTRODUCTORY STATEMENT

1. The Plaintiff brings this action under 42 U.S.C. Sec. 1983 and related state laws seeking compensatory, punitive damages and 42 U.S.C. Sec. 1983 for the defendants' violations of his rights afforded by the United States and New York Constitutions and under the laws of the State of New York.
2. Defendant, The County of Rockland, (hereinafter "The County") is a County within the State of New York, that owns and maintains the Rockland County Jail and was the employee of Detective Christopher Tierney
3. Defendant, Town of Clarkstown (hereinafter "Clarkstown") is a town w

within the State of New York and the employer of defendant Police Officer Rory Healy.

4. Defendants Rory Healy in his individual and official capacity is a police officer with the Town of Clarkstown.

5. Defendant Christopher Tierney in his individual and official capacity is a detective with the County of Rockland.

JURISDICTION AND VENUE

6. The Court has jurisdiction over plaintiff's claims under 42 U.S.C. Sec 1983 pursuant to 28 U.S.C. Sec 1331 and Sec 1342(c).

7. The Court has supplemental jurisdiction over plaintiff's state law claims pursuant to 28 U.S.C. Sec. 1367.

8. Venue is appropriate in this district as the cause of action occurred in Rockland County, New York.

FACTUAL ALLEGATIONS

9. On October 24, 2013, a felony complain was signed by defendant Healy charging plaintiff with Criminal Possession of a Controlled substance in the third degree and Criminal sale of a controlled substance in the third degree.

10. On October 25, 2013, plaintiff was arrested by defendant Tierney and during said arrest defendant Tierney utilized excessive force in handcuffing plaintiff causing plaintiff to fracture his arm

11. Plaintiff was eventually transferred to the Rockland County Jail where he remained until the matter was dismissed on April 28, 2014.

12. During the time period that he was in the Rockland County Jail he sought treatment for his fractured arm, but was not provided with the

appropriate medical care which has resulted in plaintiff sustaining a permanent injury to plaintiff's arm.

13. Plaintiff filed Notice of Claims on the defendants.
14. 50-H hearing were held.
15. No payments have been made by any of the municipal defendants.

**AS AND FOR A FIRST CAUSE OF ACTION
VIOLATION OF CIVIL RIGHTS**

16. Plaintiff repeats and reiterates all of the allegations contained in the above mentioned paragraphs.

17. As a direct and proximate result of defendants' actions, plaintiff was deprived of rights privileges and immunities secured to him under the Constitution of and laws of New York and the United States, including, but not limited to his rights under the Fourth, Eighth and Fourteenth Amendments and 42 U.S.C. 1983 to be secure in their person, to be free from physical assault, battery, punishment, false arrest, false imprisonment and improper medical care without due process and to equal protection under the laws.

18. As a result of the aforesaid violations of plaintiff's rights, sustained damages which includes a permanent injury to his arm.

19. As a result of the foregoing, plaintiff seeks compensatory damages and punitive damages in the amount that exceeds the minimal jurisdictional of this Court from all defendants.

**AS AND FOR THE SECOND CAUSE OF ACTION
NEGLIGENCE**

20. Plaintiff repeats and reiterates all of the allegations contained in

the above mentioned paragraphs.

21. Defendant Tierney acted negligently, carelessly and recklessly in arresting plaintiff which caused plaintiff to suffer a fractured arm.

22. As a result of the aforesaid, plaintiff sustained the injuries and damages and previously described in the complaint.

23. As a result of the foregoing, plaintiff seeks compensatory damages in the amount that exceeds the minimal jurisdiction of this court from all defendants

**AS AND FOR A THIRD CAUSE OF ACTION
NEGLIGENT RETENTION AND HIRING**

24. Plaintiff repeats and reiterates all of the allegations contained in paragraphs 1 through 17 as if fully set forth herein.

25. The defendants Rockland and Clarkstown acted negligently, carelessly and recklessly in hiring and/or retaining the individually named defendants in that said individual defendants were or should have been known to be employees who abused or misused their position, who gave false information, or who acted intentionally and/or recklessly toward individuals such as plaintiff.

26. As a result of the aforesaid, plaintiff sustained injuries and damages previously described in this complaint.

27. As a result of the foregoing, plaintiff seeks compensatory damages in the amount that exceeds the minimal jurisdiction of this Court from all defendants.

**AS AND FOR A FOURTH CAUSE OF ACTION
ASSAULT AND BATTERY**

28. Plaintiff repeats and reiterates all of the allegations contained in paragraph 1 through 22 as if fully set forth herein.

29. While the plaintiff was being arrested by defendant Tierney, he was

caused to be negligently, intentionally, wrongfully, willfully, maliciously, and with gross negligence, physically detained, assaulted, beaten and battered by Tierney and was caused to sustain severe and permanent injuries including fractured arm.

30. The aforementioned occurrence took place due to the negligence of the defendants, their agents, servants and employees, acting within the scope of their authority, within the scope of their employment and in furtherance of their agency.

31. The aforesaid occurrence and the results thereof were due to and caused by the negligence of the defendants and their agents, servants and employees in negligently, carelessly, and recklessly causing and allowing and/or permitting the plaintiff to be willfully, maliciously, and with gross negligence physically detained, assaulted and battered plaintiff.

32. No negligence on the part of the plaintiff contributed to the occurrence alleged herein in any manner whatsoever.

33. That by reason of the foregoing, the plaintiff was caused to sustain serious injuries, and to suffer pain shock and mental anguish.

34. As a result of the foregoing, plaintiff seeks compensatory damages in the amount that exceeds the minimal jurisdiction of this Court from all defendants

WHEREFORE, plaintiff demands damages in an amount that exceeds the minimal jurisdictional amount from all defendants in each of the five causes of action along with punitive damages and attorney's fees together with the costs and disbursements of this action.

**AS AN FOR THE FIFTH CAUSE OF ACTION
MALICIOUS PROSECUTION**

35. Plaintiff repeats and reiterates all of the allegations in the above paragraphs as if more fully set forth herein.

36. On October 25, 2013, plaintiff was falsely arrested and remained in the Rockland County Jail until April 28, 2104 when the charges were dismissed in favor of the plaintiff.

37. Defendant Healy in signing the felony complaint and the County of Rockland in the prosecution of plaintiff without probable cause committed malicious prosecution on the plaintiff.

38. **WHEREFORE**, plaintiff demands damages in an amount that exceeds the minimal jurisdictional amount from all defendants in each of the five causes of action along with punitive damages and attorney's fees together with the costs and disbursements of this action.

**AS AND FOR THE SIXTH CAUSE OF ACTION
MEDICAL MALPRACTICE**

39. Plaintiff repeats and reiterates all of the allegations in the above paragraphs as if more fully set forth herein.

40. Plaintiff was inmate at the Rockland County Jail which is owned and maintained by the County.

41. Plaintiff complained about the injury to his arm caused by defendant Tierney.

42. The defendant deviated from the standard of care in refusing and/or neglecting to provide plaintiff with appropriate care to his fractured arm which proximately caused a permanent injury to plaintiff's arm.

WHEREFORE, plaintiff demands damages in an amount that exceeds the minimal jurisdictional amount from all defendants in each of the five causes of action along with punitive damages and attorney's fees together with the costs and disbursements of this action.

DATED: New York, New York
January 23, 2015

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BY: 
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